

JUSTICE ELENA KAGAN
November 22, 2010

Location: Justice Kagan's Temporary Chambers
Host: Susan Swain, C-SPAN

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SUSAN SWAIN, HOST, C-SPAN: Justice Kagan, thank you for inviting us into your temporary chambers at the Court for this interview. Here's where I would like to start. Noah Feldman in Slate Magazine wrote a piece just this month and this sentence resonated with me somehow.

"Once an appointee has fulfilled every lawyer's ambition by making it the Court, the next step is to become a great justice." I'm going to start with two things on that. First, every lawyer's ambition. Tell me how you became a lawyer in the first place.

ELENA KAGAN, ASSOCIATE JUSTICE, UNITED STATES SUPREME COURT: Well, I think I became a lawyer for all the wrong reasons. You know I was a law school dean and when I was a law school dean, I use to tell people all the time don't got to law school just because you don't know what else to do, but the truth was that's why I went to law school, because I wasn't quite sure what else I wanted to do.

I believed all these things about law keeping your options open and a being a degree you could use for anything. I wasn't at all sure that I wanted to practice law when I started law school, but I thought well you know what could be wrong with having a law degree and then deciding.

I got to law school and what I was amazed to find was that I absolutely loved law school and studying law in a way I don't think I had love any other part of my academic experience.

I had always been a good student but I hadn't ever felt that kind of just passion for a subject matter. So, I like thinking about law. I liked that law was something which was both an intellectual challenge and puzzle but also had very real world consequences so that you could really think about using what you were learning in order to make the world a better place, in order to make people's lives better.

So, I found it endlessly interesting and challenging and you know in the end I think I went to law school for the wrong reasons but I was very glad I got there.

SWAIN: So the part about becoming a great justice, you had a lifetime, a professional lifetime to observe the Court. What do you think makes a great justice on the Court?

KAGAN: I think people are great in many different ways. So, I think some justices are great because they have extraordinary wisdom. They have an understanding of how to apply the law in

their times in a way that's completely consistent with its – the text of the law and the purposes of the law, and it's also completely right for the times that that Judge lives in.

There are some justices I think who had a very strong pragmatic sense of how the law operates in society and a real wisdom in terms of thinking about the way the law operates in a society of their times. So, one justice who comes to mind on that score is Robert Jackson.

There are other justices I think who are great because of their pens, because they are so eloquent and moving and persuasive when they write about the law. Certainly that was one of the things that made Justice Holmes a great justice.

So, I think there are lots of different qualities that people have and you know many justices who have been great each in their own way and whether I can meet any of those standards is something to be seen and something that other people will have to say.

SWAIN: You were the first justice to be nominated, not having served as a lower court judge. Pluses and minuses of that, you think?

KAGAN: Well, I think that, too, is something that other people should decide. I'm sure that I come to the job with less experience as to some things but you know possibly some other experiences that some of my colleagues haven't had. So I hope that the Court, as a whole at any rate, will be enriched by my presence. That maybe you don't need nine former judges.

That you can have some people on the Court who have different kinds of experiences and to come to this job with maybe a little bit of a different perspective because of that. But I think the learning curve is steep.

There are many things that I haven't done before that I'm doing for the first time. That's part of what makes the job so fun and so exciting and, you know, I hope I'll be able to take whatever experiences I have had, whatever talents I may have and put it to use in this different kind of place.

SWAIN: And we're talking to you about, oh, six weeks into the term. Can you talk to us about your acclimation process and what the first couple of months have been like for you?

KAGAN: Well, it's sort of like drinking out of a fire hose, you know. It's always something new, something different, a lot to learn. The learning curve is extremely steep. Sometimes it seems vertical. But people here have been so extraordinarily helpful.

I mean all my colleagues have been wonderful and warm and gracious and I think that the experiences that I have brought to the job are going to help me a good deal and being solicitor general, you get to see the Court, and everything it does, just from a different point of view, from the point of view of the advocate rather than the judge.

So I think I'm familiar with practices and the procedures of the Court. I think I'm familiar with a fair number of my colleagues, the way they ask questions, the kinds of things that they might be interested in. But it's been a whirlwind. It's, you know, new and exciting things all the time.

SWAIN: Do you find a level of popular scrutiny that you didn't have as solicitor general?

KAGAN: Well, that's for sure. When I was solicitor general, I could walk down the street and nobody would know who I was and I think as a result of the confirmation process and the fact that your picture appears in the paper and it appears on TV, you know, now I walk down the street and a lot of people know who I am, especially in Washington D.C. Maybe that's not so true if you get out of Washington D.C.

But now I walk down the street and people have been extraordinarily nice and kind. People sort of yell to me, "congratulations," you know, "you go girl," all kinds of things like that. So I feel noticed, scrutinized, in a way that I never have before.

I do think as each day goes by, as each week goes by and the number of times I appear in the newspaper, the number of photos, gets further and further away, you know, I expect I'll be able to reclaim my anonymity in time but that's been a new thing. But people have been fabulously nice.

SWAIN: We'll see. It was interesting. I was reading, getting ready for this, on a blog about the court someone noted that you were wearing jeans one night and ordering...

KAGAN: And ordering pizza and I go gee, why is that interesting to anybody? Where I order pizza from and, yes, it was what I was wearing.

SWAIN: It used to be that –

KAGAN: Jean and sneakers, yes.

SWAIN: That's what I heard. Justices would come here and resort into the anonymity of the Court but in today's society with bloggers everywhere and with video cameras everywhere, we'll see.

KAGAN: Yes. Well, I guess we will see.

SWAIN: We'll continue to follow.

KAGAN: You know, look, it's a good thing that people talk about the Court, that people have some awareness of its importance in our society, and you know there's some uncomfortableness that might go along with that, but you know in the end, I think it's appropriate that people understand the importance of the institution and have the ability to talk about it and to talk about the people who serve on it.

SWAIN: Well, while we're on that note, the big question. What do you see today and this modern society as the role of this Court?

KAGAN: Well, I think it's principally to be the guardian of the law. Sometimes the laws are constitution. Very frequently this Court, of course, decides constitutional issues, sometimes it might be statutes that Congress passes.

But it's to interpret the law and to ensure that the law is enforced and applied and that's a very different kind of role than the political role, than the role of the president and of Congress. That's not a role where you're trying to give voice to what you think are the general sentiments of the American people or public opinion.

Your job really is to look at the law, to try to figure out its meaning the best you can and to apply it and that's often hard, they often are very difficult questions that arise. When the Court tries to do that job, questions which sometimes members of the Court disagree about and disagree strongly about, but I think we're all trying to do the same thing which is to look at the law that exists, the constitution, the statutes, to figure out what it means and to apply and enforce it in the way it ought to be.

SWAIN: Well, speaking of Court watchers, everyone was very interested to know when you would ask your first question and what that question would be and I'm wondering about your own thinking in your first oral argument. How did you plan what the topic was going to be? Was it really the intellect of the moment that caused you to jump in at the point that you did? Can you tell me about that experience?

KAGAN: Sure, I don't think I stressed about it too much. The first case that I sat on was actually a bankruptcy case. I didn't think it was going to arouse too much attention and I don't think it really did. There was a complicated bankruptcy case and I just tried to prepare for it as well as I could tried to figure out the issues involved.

And what I've done for each case is really to as I prepare for it to think about what questions are important to me, you know what I don't understand, what I don't know, what sorts of answers from lawyers might actually make a difference in the way I think about a case.

And to – so as I prepare I sort of have a running list of questions that I'm puzzling about or questions that I would like answers to. And I walk into an argument with some general sense of that list.

Often my colleagues will ask a question you know before I get to it and then I'll not repeat what they do but I'll try to sort of see a little bit what my colleagues are asking try to figure out what some of them are interested in. But a little bit I come in prepared with a set of questions but I also listen hard to what happens in the argument to try to figure out which of those questions I should ask, which would be important, which would be meaningful.

SWAIN: It looks as though you intend to be an active questioner.

KAGAN: Well I think most of the justices are active questioners. It's one of the great things about the Court now. You know I clerked on the Court some number of years ago in the mid to late '80s and then it was a much less active Court. What people call them a hot bench a much less hot bench that many of the justices on the Court at that time wouldn't ask any questions at all or if they asked maybe, they would ask a few questions.

But a lawyer could really spin out an argument then in a way that is impossible now. Because I think, now most of us are active questioners and that means that the lawyer and, I was the lawyer last year, the lawyer is just sort of constantly trying to answer one after another after another as quickly as you can because you know you're not going to have a large amount of time.

I think it's a good thing about the Court. I mean maybe sometimes we take it a little bit far and sometimes you'll see an argument where you think 'oh, that poor lawyer, he just really never had a chance to tell us the you know the basic theory of the case.' But you know mostly that can happen in briefs. You know all of us read the briefs very carefully and the lawyer has the opportunity in the briefs really to say what he thinks of the case.

The argument is for us to say well yes, we've read your brief we know what you think of the case but here are the questions that, that inspired in us. You know here are the concerns we have or here are the uncertainties that you left open and use oral argument in order to do that. Say we know what you think you know but what's really important is that you respond to our questions and our concerns.

SWAIN: So argument still has a value even though you come in with some vast knowledge of the case at hand and what the issues are.

KAGAN: I think it definitely does now you know sometimes it will have more of an effect than other times. Sometimes you have a sense that people have come in and they basically they've read the briefs and maybe they've had experience in similar kinds of cases and they basically know what they think.

Other times you'll see a much more open exploring set of questions and you can see that the Justices are struggling with some new issue or with some different aspect of an issue that they haven't confronted before. So sometimes it really makes a difference in terms of you know help me to try to figure this out.

You know sometimes maybe a little bit less so sometimes in those sorts of cases where people have figured it out a little bit maybe the justices are using the questions almost as much to talk to their colleagues as to get information from the lawyer.

And that's also a value of oral argument because we don't talk about the cases together before hand and so oral argument provides the first chance for you to see what your colleagues might think about a case, what's worrying them about a case, what interests them about a case.

And for you to suggest to them what you think and so part of oral argument is that too. Is that the justices a little bit talking to each other kind of through the lawyer and the lawyer is just this person who happens to be there.

SWAIN: Facilitates.

KAGAN: Yes, exactly facilitates the conversation among the justices.

SWAIN: Having been in the role, what is your mind set about the government advocates? Do you think you're going to be tougher on them because you know what it takes to stand there?

KAGAN: I hope I'll be – I'll treat them just the same way I treat everybody else. I think for sure they ought to be held to a high standard but frankly, everybody ought be held to a high standard when they come to the court, that they ought to know their stuff and they ought to be prepared to answer our questions.

And you know I'm certainly not going to give them any breaks but I also I know that they work very hard and I don't think I'm going to hold it against them that they work for the government. I think that those lawyers are performing a vital service and the solicitor general's office is in fact, very important to the way the Court works.

The solicitor general's office frequently appears in cases in which the U.S. government is not itself a party but the government has some interest provides some expertise and I think that the Court listens carefully to the government when it does that. Doesn't give those arguments any

more respectful treatment than anybody else's but I think understands that that's an important set of arguments to understand when one is looking at a case.

SWAIN: While we're talking about argument and listening to some of the recordings of last year's cases, it's interesting to hear your colloquies, I guess that's the right word with the chief. I'm wondering about your intellectual relationship with Chief Justice Roberts because often your questions were and answers were very rapid fire and I'm wondering what you think of the intellectual relationship between the two of you.

KAGAN: Well, I have an extraordinary respect for him and then he was the great Supreme Court advocate of his time before he became a judge. And so I always felt as though you know he could do better what all of us as lawyers were trying to do. And he did it as well as anybody has ever done it was to be at that podium and to make an argument to the Supreme Court.

And that's a little bit intimidating to know that the person questioning you has also stood in your shoes and has really done the job better than anybody else ever has. You know I've listened to the chief's arguments and I've talked to a lot of people who saw the chief's argument and he was fabulous. He's also a great, great questioner up there on the bench and he really challenges you as he should you know.

And he doesn't let you get away with anything you know doesn't let you – if there's something you want to hide in your argument he's probably pretty certain to find it. So he was – I tremendously enjoyed arguing in front of him because you had to be at the top of your game and you should have to be at the top of your game.

SWAIN: Let's back up a little bit. Will you tell the story for the cameras and for the archival record about the call you received from the president to nominate you?

KAGAN: Well I received it the night before the announcement and I'll tell you just you know maybe a little bit of a secret, I kind of thought it was coming. It wasn't – it didn't come completely out of the blue. And mainly – so I had been on the short list for the prior nomination the one that Justice Sotomayor was picked for. I had interviewed with the president and then I had not received the good call I received the bad call you know the call that says sorry it's not you.

And the reason I say it wasn't completely a surprise the second time was because I could see that there was really a difference in the way – in the days leading up to the announcement between the first time and the second time. You know that they were – the second time they asked me for a much more materials and they made me prepare a statement and they started worrying about what clothing, I would wear and things like that.

So I had probably a pretty good idea especially comparing next to what had happened the previous year that I was more in the game the second year than I was in the first. So ...

SWAIN: Where were you when the call came?

KAGAN: I was at home. I stayed home. You know they had basically told me when I should be home and I was home at that time. And the president called and he was wonderfully kind and terrific. And I think I started crying a little bit and he was just very – everything he said just moved me profoundly. He gave me one piece of advice which I didn't take and this maybe relates back to a prior question you asked me.

He told me not to read the newspapers for the whole time of my nomination and confirmation, and sometimes I took that advice and often I didn't. Much to my regret, it was good advice that he gave me, but he was wonderful, he was just kind and very personal, and – the second conversation was a lot more fun than the first.

SWAIN: So if Noah Feldman of Slate is correct and it's "every lawyer's dream," can you describe what the emotions were like?

KAGAN: Just overpowering, overwhelming, and it's just such an awesome responsibility. And it's obviously a great privilege to be here but it's also just an enormous responsibility to be here.

This Court decides important questions and many people's lives are changed because of this Court's rulings. And that means you have to do your best to get it right and you have to work as hard as you can to get it right.

So, that's humbling and you know and sort of awe inspiring but there's also this sort of like it's fun and interesting as well as this whole mix of things where it's the most interesting thing you've ever done. And it's also the most important and the most humbling thing you've ever done.

SWAIN: So let's talk about the confirmation process you said that the president advised you not to read the newspapers but Supreme Court nominations and confirmations are so politicized these days. I'm wondering what your reflections about it are now having come out the other end.

JUSTICE ELENA KAGAN: Well I think you know having come out the other end and having been approved it's hard to say the process was too bad, right? You know I got through it and I think in general people treated me well and people treated me fairly. And even the people who voted against me for whatever reasons, I thought gave me a respectful hearing both when I went around – you do these courtesy visits to all the Senators I did I think 82 of them.

And people I thought were very – I mean they're called courtesy visits and people were in fact very courteous and then during the hearings I thought people asked me good and fair and important questions. And I actually enjoyed that part of it I'm not sure I expected to, but it was an opportunity to talk about something that I love and something that I've been thinking about for a long time, which is the role of a judge in society, which is the role of the Supreme Court. And I enjoyed that part of it, I had a good time doing that.

Now sometimes they – the Senators what they really want to know you just can't tell them because what they really want to know is kind of they want you to give a sort of thumbs up or a thumbs down on you know the 10 hot cases of the last 20 years. Or they want you to give them a sign on how you're going to come out on the next 10 hot cases that they think are going to be coming down the pipeline.

And people do that on all sides you know they do it from you know the Democrats do it the Republicans do it they have a different set of cases and maybe a different set of litmus issues but all of them want to know those things. And you have to kind of keep on saying 'you know I can't talk about that but I can talk about some more general issues.' And sometimes you thought well they really don't care about the – they really don't care what I think about constitutional interpretation they just want to know you know how I'm going to come out on this case.

And that's something that I'm not going to be able to tell them but I think a lot of them up there a lot of the Senators are very thoughtful, are very smart, are very educated about a whole wide range of legal issues. And I enjoyed my colloquies with them with both people who were really putting it to me and with the people who were a little bit more tossing me softballs.

SWAIN: How have you processed those 37 "no" votes?

KAGAN: You know it really doesn't matter at all I mean you're the same justice whether there are 49 no votes or 37 no votes or zero no votes and honestly I just think it's sort of part of the process now. That you know there have been quite a number of less now some appointed by Republican presidents and some appointed by Democratic presidents who have had some significant number of no votes and just because as you said the process has become in part politicized and you're just going to have some opposition.

I like to think I didn't have much to do with me and I think that that's true of me and of a number of my colleagues that the number of no votes just doesn't have much to do with you. It has to do with the political situation at the time, it has to do with the relationship between Congress and the president, it has to do with a whole world of things other than what they really think of you.

SWAIN: Much was made of the fact that this was the first Court with three female justices on it. Do you think there is going to be a time at which people will stop noticing gender?

KAGAN: Yes, I think probably but we haven't reached it yet because as you say much was made of it. And I think it was important and meaningful to a lot of people and I think it should have been. To see a Court which more closely reflects American society and the role of women in American society is a I think an important thing and a good thing and a note worthy thing.

So I don't at all take it amiss that people say "oh, you know maybe she was a woman and maybe that was part of why she was picked." You know if that's the case, so be it. I think you know it's a terrific thing that there are three women on the Court and think people are not wrong to talk about it.

SWAIN: Justice, while we're staying with the female justices, Justice O'Connor and Justice Ginsburg both talked in the interviews about wanting to add a feminine touch to the judicial robe and this process of going to find them at the time none were available in the United States you have chosen to just wear the black robe. Did you think about that was that a conscious decision and if so why?

KAGAN: I think you just have to do what makes you feel comfortable. In my real life, I'm not a kind of frilly lacy person and so some of the things that people wear just sort of struck me as not something that I felt comfortable with. But I have on occasion worn like a white scarf under my robe I think I wore that for all our pictures and for my investiture. And I wear pearls a lot, which sort of peek out from the robe so but you know I think that robe is a symbol.

And it's a symbol of sort of the impersonality of the law and about how you put on that robe and you know who you were before in a way is meant to go away. That you're supposed to apply the law and supposed to do justice apart from any personal characteristics that you have. And I think that's a profound symbol, that kind of plain black robe that says you know I'm going to try to the extent that I can, not to be guided by any personal experiences or personal characteristics but to apply the law in the fairest way I think is possible.

SWAIN: Here comes the how did it feel questions again. But when you were in the Robing Room for the first time and were helped on with your robe can you talk to me about that process and also making the first formal entrance into Court as a sitting member of it?

KAGAN: Well here's a little bit of a story is when I walked in for my swearing in this was in the summer before my big grand public investiture so this was the swearing in that was necessary in order for me to start during the summer to actually do the work of the Court. And I was met by the chief justice and he gave me a little bit of a tour of the inner rooms that the justices go to, the Conference Room the justices meet in and the Robing Room where the justices take on and off their robe and the dining room upstairs.

And on the tour he showed the Robing Room and I looked and there were sort of these wood lockers and it goes from the chief justice and then it said Justice Stevens and then it carried on down. And the last locker was Justice Sotomayor and then we walked around to the building a little bit and he showed me some other rooms and maybe we took about 15 minutes and we ended up back in the Robing Room again.

And in that 15 minute, time what had happened was that Justice Stevens' nameplate had come off and each of the nameplates had gone over one and now there was a Justice Kagan and he sort of showed me the new locker with the Justice Kagan nameplate. And it was a very effective way to say to me well you're here now you're part of the community you're part of the institution and it was a very powerful thing to see.

SWAIN: Processing to the bench for the first time as a sitting justice after all the time you'd spent in that courtroom describe the difference when you walked in for the first time.

KAGAN: I mean it was just an awe-inspiring moment to sit up there on that bench and take look out. And as you say, I'd been in that courtroom many, many times and over the last year or 18 months almost daily in terms of the public meetings of the Court. But you're – I was the front row in the audience or behind the podium and to be on the bench and to look out at the lawyers and the public as you very much feel a sense of responsibility and a sense of awe.

SWAIN: You've been in a lot of courtrooms over the years. What do you think of this courtroom itself?

KAGAN: It's magnificent, yes I mean it's –you know what I am most surprised by – was most surprised by I think when I became solicitor general and I started spending a lot of time there.

And I hadn't been in the Supreme Court room for a number of years before that, and what struck me as solicitor general was how close the podium was to the bench. So how close the lawyers who are arguing are to the justices who are asking questions.

It really is – you're almost on top of the lawyer and so any inclination that the lawyer might have to make a speech, I think goes away. You're just like right there and it's much more natural to have a conversation, to have a give and take than for anybody to be orating in anyway.

So that's what I think is incredibly special about the Court, that the lawyer's are just face to face with the justices, just so close and that what that encourages is a kind of conversation which is what I think ought to be happening in the courtroom.

SWAIN: While we're talking about the building, since we recorded our series of interviews for this documentary, one thing that's happened is the great bronzed doors have been closed because of security.

That was always such a symbolic part of the process, the lawyers processing from the Court and going down those white marble steps. What do you think has happened to the building and the feeling of the process as a result of security measures closing those doors?

KAGAN: You know this happened last year before I got to the Court, and I wasn't privy to any of the conversations that occurred among the Justice's and I don't really know the kinds of reasons people had.

And I – am not in a position at all to you know to think whether there were appropriate justifications for closing them or not, I just don't know.

UNIDENTIFIED PARTICIPANT: You know I'm actually not asking about the justification for closing so much as the feel of operating in the Court as a result of them being closed. Is it...

KAGAN: I think in the Court you – it doesn't make a difference you know in the Court, it's as grand as it always was. And the people in the Court are the same I think, people come from all walks of life.

So you have you know the people who are the Supreme Court Bar and who are really there all the time but you also have many, many members of the public just – you know some who come for an entire argument.

So who come for five minutes, they kind of take people in for five or 10 minutes just to give them a sense of what an argument looks like and then they go out again and I think in the Court it's grand and awe inspiring as it ever was.

SWAIN: You mentioned the dining room; we heard that this tradition was suggested by Justice O'Connor and that it's optional for justices. Have you decided to take part in that?

KAGAN: I go all the time, I mean you know I think maybe I've missed one, but I go all the time. But I am told that Justice O'Connor was kind of the enforcer of this, that you would walk around the building and say "why aren't you going to lunch you should come to lunch."

And I think that that's fabulous, I think that this is a community and people should get to know each other and be – and get to really try to understand each other and care about each other. And so you know to the extent that she said you know lunch was our time for doing that.

I think it's tremendous.

SWAIN: The place inside this building that I guess the phrase that comes to mind is Sanctum – Sanctorum which is the Conference Room, you have special roles in there because of being the junior most justice.

When you walked through that door for the first time as a member of the Court, a place where no one except for sitting justice's can go. What's it like in there?

KAGAN: It's a great room; it's a lovely room, as every room in the Court is. I think I had never been in the room before you know I clerked here for a year. And I was solicitor general but I don't think even as a clerk I had ever been in that room before.

And to walk in and to see it is you know is a very striking experience.

SWAIN: So besides the room, what's the conference process like?

KAGAN: Well we all sit in assigned places; the Chief sits at one end, the Senior Associate Justice which is now Justice Scalia sits at the other end. And then kind of goes by seniority, my chair is the chair nearest to the door and the reason why my chair is nearest to the door is because I have two special responsibilities and one of those responsibilities is to get the door when anybody knocks. So people can knock because somebody left their glasses, you know in their office, or somebody can knock because just to give a message to a justice.

But my role is to get up and go to the door and get whatever it is, because nobody comes in, none of the clerks do, none of the, you know secretaries, or assistants, or anybody who works in the Court do.

So I have to – in fact there's a kind of set of double doors, so I have to go and open one and then open the other and pick up whatever it is that somebody wants to give. That's one of my jobs; the other of my jobs is to take good notes.

Because I'm the person who at the end of the conference goes to the clerk's office and tells them exactly what the justices decided. And in a given conference we might talk about a discreet number of argued cases.

But we also talk about a large number of other things, relating to which cases the Court is going to take. So they're a fair number of votes you know to grant or to deny a case, to grant or to deny a motion of some kind that I have to convey to the clerk so, I'm busy writing away all the time that I sit there. And then of course sometimes these two roles conflict a little bit, because you have to get the door but you also have to be writing your notes and you're not quite sure what to do.

But those are the two special roles of a junior justice.

SWAIN: The – explain the process because as solicitor general you are in this first year, having to accuse yourself from a number of cases. So how does it work when there are cases under your consideration where you've recused yourself?

KAGAN: Well when – on the cases I've recused myself from where there's any discussion that will last you know anything other than a moment. I actually get up and walk out and they just let me know when I should come back.

And that's consistent with the general practice that if somebody is recused from a case and there is some kind of discussion about the case, the person will not be there for that discussion.

SWAIN: Will the arc of recusals kind of diminish?

KAGAN: Definitely, I mean the worst month was October and I think by the middle of this year most of them are likely – most of the recusal issues are likely to be gone.

There'll be an occasional case even after this year and in the spring where I will have to recuse myself but the arc is definitely subsiding.

SWAIN: We've heard – you know we've done a number of these interviews all the justices – and we've heard varying accounts of what the tenor is like inside that room.

Some say robust, debate, it's my chance to argue as a lawyer, others have painted a more I guess, less combative situation, what's the temperature like as you've been in there?

KAGAN: Well I think there's really good discussion, it goes around the room and there's a rule which I like because I'm the ninth person.

There's a rule that nobody can speak twice before everybody's had a chance to speak once. So it means that everybody gets a chance to be heard before people start going back and forth with each other.

But you know each person talks about you know the way that person sees the case, what the important issues are, how they would resolve those important issues, and then sometimes that's it you know.

It's just clear what's going to happen and it's clear that there aren't really any questions to be batted around. But often it's not, but, often – it will be – people will go back and forth.

People will say “oh, I changed my view when I heard what some other justices had to say,” and I think that's a better way of doing it. Or people will say “well we don't really seem to have a clear majority for any approach let's talk about it until we develop a sense of where that clear majority will come from.”

And sometimes people will argue with each other, so it's never hot, it's never combative, it's certainly never angry, but there's – I think a good discussion.

SWAIN: It's hard for people outside the Court, especially people who are passionate about issues, to understand how you can have so many five – four decisions and still have a great deal of comity. How does that work inside this building?

KAGAN: Well I'm sure I'll learn more about that as the months and years go by, but it is a very striking and I think it's not unusual, it's not the only Court that works like this by any means.

That in fact collegiality is generally prized as a real traditional virtue on many courts, but this surely is one of them, that people value very much. Their personal relationships with the other justices, value their friendships. And you know and you know they all know that they're going to disagree with each some amount of the time.

But I think everybody understands that everybody else is operating in complete good faith. That everybody is trying to do their job as best they can. Try to read the constitution and the laws as fairly and as forthrightly and honestly as they can and I think people give each other credit for good faith, for thoughtfulness, for fair mindedness and I think, look, it's just also, I mean who would want to be part of an institution when everybody dislikes each other.

You know I think it's actually one of the great things about the Court right now is that even people disagree and sometimes disagree sharply there are important questions, hard questions that people have strong views on but that they can understand that everybody is trying to do the best they can and everybody is working really hard and everybody cares a lot of about the law and about this country as well.

So I think that none of that is fake you know. That is very real, the kind of respect that people have each other.

SWAIN: As of our taping today, have you been assigned an opinion?

KAGAN: I have. We've had two sittings and you know the general practice and I won't be very much more specific than this, that every justice gets at least one opinion from each sitting. So that general practice has been followed.

SWAIN: This is the part of the job that's new and we learn so much about the art of persuasion through opinion writing. How are you approaching that?

KAGAN: Well I would like my opinions to be as clear as possible. I would like people to pick them up and understand them. I would like them to be as thoughtful as possible. I would like to write the kind of opinions which really do address the competing arguments. Don't try to sweep competing arguments under the rug, but try to address them fairly and forthrightly. You know so I guess I would just – you know I'm trying hard to write opinions that I think are thoughtful and complete and as well reasoned as I can make them.

SWAIN: We're running out of time, and I have two sort of minor questions. First of all, justices talked to us about how the briefs follow you everywhere. There is just no end to reading.

KAGAN: Right.

SWAIN: We learned last week that Justice Scalia has taken to putting his briefs on an iPad.

KAGAN: Yes.

SWAIN: How are you managing the briefs?

KAGAN: Well, I have a Kindle that my briefs are on. You know I saw Justice Scalia, he said that he had them on an iPad and I thought, huh, maybe I should have them on an iPad. But mine are on a Kindle and I also of course you know sometimes truck them around just on hard copy. So I do both.

But it is, its endless reading. Because you know many of these cases not only the parties submit briefs but there are many, many organizations and individuals and governments who are interested in the case so they'll submit Friends of the Court briefs, *amicus* briefs.

So in some of these cases there will be you know 40 or 50 briefs so there is a lot of reading. And you know that's a big part of the job and if a Kindle or an iPad can make it easier, that's terrific.

SWAIN: Do you find that there's any time for personal life or are you reading all the time?

KAGAN: Yes, I've always worked hard but I've also found the time to do things that I like to do so I'm hopeful that, that will still be the case.

SWAIN: And last question is really about your – you mentioned earlier about educating the public about the role of the Court in society. Do you plan to be a public justice? Do you plan to be out speaking a lot beyond panel sessions writing books sometime in the future? What's your approach going to be to interacting with the public?

KAGAN: Well I think that this will develop over time I don't plan to be a public Justice in my first year. In my first year what I'm planning to do is to try to learn as much as I can about the Court and about the issues that the Court handles and to soak it all in and not to distract myself by going out and doing a lot of speaking and so forth.

But over time, I think I will do more of that I actually, do think it's an important part of the role to be a person who helps to educate the American public about the processes of the judicial role and legal interpretation. And I think I would enjoy doing that so I think over time I'll do more of that but I think I'll sort of play it by ear a little bit and try to figure out what audiences I think are most important and what messages I think are the most appropriate ones for me to convey.

SWAIN: Well our last question is kind of the catch all, which is the biggest surprise you want people to know about the experience of being here that you've learned so far.

KAGAN: The biggest surprise, gosh, you know I'm a little bit – I'm trying to think of what the biggest surprise was.

SWAIN: Let me ask it in the other direction. Is it all as you expected?

KAGAN: I'm not sure I had a defined set of expectations is really the answer to that. So to have something that's really a big surprise you'd have to have some real set of expectations that this was like it's total not like what I thought it was. And I think for the most part I didn't quite know what I would find. I didn't quite know how the justices would relate to each other at conference. I didn't quite know how the internal processes would work.

This is a little bit of a black box in terms of the way the American public views the Court right. The American public sort of sees the certain processes not even so much that, you know, hears about arguments can listen to tapes of arguments but I don't think has a very good idea of what happens inside the institution and that's true even of lawyers who appear before the Court all the time. That I think there's a lot of guessing like what does go on in there.

And so I wasn't sure what I would see but what I see I think has been very inspiring because I think you have nine people who are working really hard and who are trying the best that they're able to do something really important in this country. And I think what I've seen is an institution that works very well and the American public should be proud of.

SWAIN: Well thank you for helping us understand it better with this interview thanks for your time.

KAGAN: Thank you.

END